

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GENEVIEVE T. PORTER AND STEVEN
PORTER,

Plaintiffs,

v.

WALMART INC., a Delaware corporation,
JOHN DOE MANAGER and JANE DOE
MANAGER, husband and wife; JANE DOE
ASSISTANT MANAGER and JOHN DOE
ASSISTANT MANAGER, wife and husband,
and "JOHN DOE EMPLOYEES 1-5",
Defendant.

NO. 3:22-cv-05435

(LEWIS COUNTY SUPERIOR COURT
CAUSE NO. 22-2-00305-21)

NOTICE OF REMOVAL BY
DEFENDANT WALMART INC.

(CLERK'S ACTION REQUIRED)

TO: CLERK OF THE COURT;

AND TO: PLAINTIFFS' COUNSEL OF RECORD

I. RELIEF REQUESTED

Defendant WALMART INC. ("Walmart") seeks to remove the above-captioned case from Lewis County Superior Court in Washington State to the United States District Court for the Western District of Washington at Tacoma under 28 U.S.C. §§ 1332, 1441, and 1446.

II. STATEMENT OF FACTS

1. Underlying Incident

Plaintiffs GENEVIEVE PORTER and STEVEN PORTER, collectively ("Plaintiffs"),

alleges that on August 2, 2019, while shopping at the Walmart store located in Chehalis, Washington, store #2249, Ms. Porter slipped and fell, suffering injuries. *See* Declaration of Gabrielle Lindquist, attached hereto as **Exhibit A**; *see also* Summons and Complaint, attached hereto as **Exhibit B**.

2. Relevant Procedural Facts

Plaintiffs filed a Complaint in the Superior Court of Washington for Lewis County on April 28, 2022. *See* Ex. B., and served Walmart on April 26, 2022.

Walmart served its RCW 4.28.360 Request for Statement of Damages (“RSD”) on Plaintiffs on May 6, 2022 and received Plaintiffs’ response thereto on June 6, 2021. *See* Plaintiffs’ response to Walmart’s Request for Statement of Damages, attached hereto as **Exhibit C**. In their response, Plaintiffs indicated special damages in the amount of \$158,627.37. *Id.*

III. STATEMENT OF ISSUE

Whether this case may be properly removed to federal court where there is total diversity between the parties and the amount in controversy is in excess of \$75,000 exclusive of interest and costs according to Plaintiffs’ response to Defendant Walmart’s Request for Statement of Damages.

IV. EVIDENCE RELIED UPON

This motion is based upon the records and pleadings on file with the Court, as well as the Declaration of Gabrielle Lindquist, Esq., attached hereto as Exhibit A.

V. ARGUMENT

A. This Case Is Removable Under 28 U.S.C. § 1332, Through Which This Court Has Original Jurisdiction Over The Lawsuit Filed by Plaintiffs In Lewis County Superior Court

The district courts shall have original jurisdiction of all civil actions (1) where the parties in the case are diverse as defined by 28 U.S.C. § 1332(a)(1)-(4); (2) where the amount

1 in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs; and (3)
 2 where removal is timely. The amount in controversy can either be evident “on the face” of the
 3 Complaint or ascertained via some later pleading(s) or “other paper” in the record of the state
 4 court proceeding. *See* 28 U.S.C. § 1446(b)(3); *see also Harris v. Bankers Life and Cas. Co.*,
 5 425 F.3d 689 (2005).

6 When and how removability is “ascertainable” matters with respect to whether removal
 7 is timely under 28 U.S.C. § 1446. There are, generally speaking, two viable “removal
 8 periods.” *See Harris*, 425 F.3d at 694. [1] A defendant has 30 days to remove a case if the
 9 removability of the case is evident on the face of the complaint; or [2] a defendant has 30 days
 10 beyond some later period from which it first becomes ascertainable that the case is removable.
 11 *See id.* (“[T]he first thirty-day requirement [to remove] is triggered by defendant’s receipt of
 12 an ‘initial pleading’ that reveals a basis for removal. If no ground for removal is evident in that
 13 pleading, the case is ‘not removable’ at that stage. In such case, the notice of removal may be
 14 filed within thirty days after the defendant receives [‘other paper’] from which it can
 15 ascertained...that removal is proper.”) (citations omitted).

16 In this case, (1) diversity between the parties is evident on the face of the Complaint;
 17 (2) the fact that the amount in controversy exceeds the sum or value of \$75,000 exclusive of
 18 interest and costs was not evident on the face of the Complaint, but *is now* evident from
 19 Plaintiffs’ response to Walmart’s Request for Statement of Damages, and (3) insofar as
 20 Walmart is filing this Notice of Removal within 30 days of service of receiving aforementioned
 21 response to Walmart’s Request for Statement of Damages, Walmart’s Notice is timely and this
 22 case may be properly removed under 28 U.S.C. §§ 1446(b) and 1332.

23 1. There Is Diversity Between The Parties

24 Per the Complaint, Plaintiffs are all residents of Lewis County, Washington. *See* Ex. B
 25 at ¶1.2. Thus, Plaintiffs are “citizens of” Washington State. Walmart Inc. is (a) incorporated

1 in Delaware and (b) its principal place of business is in Arkansas. Thus, Walmart is “a citizen
 2 of” either Delaware or Arkansas, but not Washington State. *Accord* 28 U.S.C. § 1332(c)(1).
 3 Additionally, while there are multiple fictitious Defendants named in the Complaint, under 28
 4 U.S.C. § 1441(b)(1), “In determining whether a civil action is removable on the basis of the
 5 jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under
 6 fictitious names shall be disregarded.”

7 Based on the foregoing, there is diversity between these parties as described in 28
 8 U.S.C. § 1332(a)(1).

9 2. The Amount In Controversy Exceeds The Sum Or Value Of \$75,000

10 Per Plaintiffs’ response to Walmart’s Request for Statement of Damages, the amount in
 11 controversy in this matter is in excess of \$158,000. *See* Ex. C.

12 3. Walmart’s Notice Of Removal Is Timely

13 In this matter, the case stated by the initial pleading was not removable (no specific
 14 amounts claimed in Complaint); however, Plaintiffs’ response to Walmart’s Request for
 15 Statement of Damages constitutes “other paper” within the meaning of 28 U.S.C. § 1446 from
 16 which it could first be ascertained that this case is removable.¹ As this Notice is being filed
 17 within 30 days of receipt of that “other paper,” this Notice is timely.²

18 B. Walmart’s Notice Of Removal Complies With All Applicable Local And Federal
 19 Procedural Rules Attendant To Removal

20 1. This Notice And Accompanying Documents Satisfy LCR 101

23 ¹ “If the case stated by the initial pleading is not removable solely because the amount in controversy does not
 24 exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of
 the State proceeding, *or in responses to discovery, shall be treated as an ‘other paper’* under subsection (b)(3).”
 28 U.S.C. § 1446(c)(3)(A) (emphasis added)

25 ² Walmart received Plaintiffs’ Request for Statement of Damages on June 6, 2022 and is filing this Notice of
 Removal on June 10, 2022.

Pursuant to LCR 101(b), in cases removed from state court, the removing defendant shall file contemporaneously with the notice of removal:

- (1) A copy of the operative complaint, which must be attached as a separate “attachment” in the electronic filing system and labeled as the “complaint” or “amended complaint.”
- (2) A certificate of service which lists all counsel and pro se parties who have appeared in the action with their contact information, including email address.
- (3) A copy of any Jury Demand filed in the state court, which must be filed as an attachment and labeled “Jury Demand.”

In addition to the foregoing, the removing defendant(s) shall, within 14 days of filing this Notice, or contemporaneously, file with the clerk of this Court black-on-white copies of all additional records and proceedings in the state court, together with verification that they are true and complete copies. LCR 101(c).

Walmart has filed and/or otherwise provided true and complete copies of all of the above referenced documents as required under local rules, including copies of all records and proceedings filed in the state court proceeding being removed by virtue of this petition. These documents and/or exhibits constitute and contain the entirety of the records and proceedings filed in Lewis County Superior Court as of the date of filing this Notice. True and complete copies of all pleadings, records, and documents filed in the state court action are also attached hereto as **Exhibit D**.

2. Both The Federal And State Courts Are On Properly Notice Of This Removal Action

This Notice is properly filed in the United States District Court for the Western District of Washington at Tacoma because this Court embraces Lewis County, the county in which the state court action is now pending. *See* 28 U.S.C. §§ 128(b) and 1441(a).

1 Pursuant to 28 U.S.C. §§ 1446(d), Walmart is filing a copy of this Notice with the Clerk
2 of the Lewis County Superior Court and is also serving a copy of this Notice on Plaintiffs'
3 counsel of record in the state court action.

4 **VI. CONCLUSION**

5 Walmart hereby removes this case from the Lewis County Superior Court to the United
6 States District Court for the Western District of Washington at Tacoma pursuant to 28 U.S.C.
7 §§ 1332, 1441, and 1446. By removing, Walmart does not waive any defenses, including but
8 not limited to lack of personal jurisdiction, insufficiency of process, or insufficiency of service
9 of process.

10 DATED this 13th day of June, 2022.

11 **WILLIAMS, KASTNER & GIBBS PLLC**

12 /s/ Eddy Silverman

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19 ***Counsel for Defendant Walmart Inc.***

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused service of a true and correct copy of the foregoing document in the manner indicated below to:

CERTA LAW GROUP

☒ CM/ECF

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Counsel for Plaintiffs

Signed at Seattle, Washington this 13th day of June, 2022.

WILLIAMS, KASTNER & GIBBS PLLC

s/Ryan McDade

Ryan McDade, Legal Assistant
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